IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1888 of 2004

with
CIVIL APPLICATION NOS. 1251 OF 2004 and 2113 OF 2004

For Approval and Signature:

HON'BLE MR.JUSTICE K.M.MEHTA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MADHU B GUPTA

Versus

PANCHSHEEL MERCANTILE CO-OP BANK LTD

Appearance:
1. Special Civil Application No. 1888 of 2004
DR SONIA HURRA for Petitioner No. 1-3
MR. A.J. PATEL AND MR. RAVINDRA SHAH for Respondent No. 1
UNSERVED-REFUSED (N) for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE K.M.MEHTA

Date of decision: 6/07/2004

C.A.V. JUDGEMENT

Shri Madhu Gupta, Sole Proprietor of Shiv Enterprise, petitioner No. 1, Shri Ram Avatar Gupta, petitioner No. 2, Shri Anand S. Gupta, petitioner No. 3 have filed this petition under Article 226/227 of the Constitution of India challenging the order dated 13.1.2004 passed by the Gujarat Co-operative Tribunal, Ahmedabad in Revision Application No. 18 of 2004 and order dated 29.12.2003 passed by the Board of Nominees in Summary Lavad Case No. 5 of 2003. The Tribunal by its impugned order was pleased to partly allow the application and direct the applicants, petitioners herein, to pay 33.5% amount within one month before the Board and thereafter the applicants will have leave to defend.

2. The facts giving rise to this petition are as under:

2.1 Shri Ram Avatar Gupta, Petitioners No. 2 and Shri Anand S. Gupta, petitioner No. 3 purchased company M/s. Veenutax Dyeing and Printing Mills Pvt. Ltd. and they continued to work as directors of the said company till May, 1998. The petitioners have other sister concerns Shri Shiv International, Shri Shiv Corporation, Shri Shiv Ambe Synthetic Corporation and Shri Shiv Textiles. Due to financial crunch suffered by the petitioners in the year 1996 and thereafter they could not pay to the banks hence they decided to encash shares of M/s. Veenutax Dyeing and Printing Mills Pvt. Ltd. On 8.5.1998 all the shares of the company was sold to Shri C.R. Patil with clear understanding that he would settle the liability towards GSFC, GIIC and Panchsheel Mercantile Co-operative Bank for and on behalf of Shri Ram Avatar Gupta and Shri Anand Swaroop Gupta. It is the case of the petitioners that pursuant to the undertaking given by the said Shri C.R. Patil, Shri Pravin Nayak, Managing Director and Shri Narottom Patel, Chairman of the Panchsheel Mercantile Cooperative Bank, Shri C.R. Patil, Shri Anand Swaroop Gupta and Shri Ram Avatar Gupta held meeting and it was resolved in the said meeting that total dues of the respondent bank will be paid by Shri C.R. Patil and for the said purpose one time settlement amounts were arrived at towards respondent bank, GSFC and GIIC.

From 30.9.1995 to 14.7.1998

2.2 As per bank statement as on 31.3.1998 amounts due were as under:

Veenutex Dyeing & Printing

Mills Pvt. Ltd. Rs. 59,72,017.00

Shree Shiv Textile (CC account) Rs. 68,02,594.64

Shree Shiv Textile (BP Account) Rs. 34,70,414.00

Shree Shiv Ambe Synthetic Corpn. Rs. 16,38,981.00

Shree Shiv International Rs. 42,66,938.00

Total Rs.221,50,864.64

2.3 On discussion and deliberations between petitioners and Shri C.R. Patil, Shri Pravin Nayak, Managing Director and Shri Narottom Patel, Chairman of the Panchsheel Mercantile Co-operative Bank, the respondent bank agreed to deduct firstly interest and miscellaneous charges from 31.5.1995 to 31.3.1998 and that came out of Rs. 17,72,570.00. Further in the case of Shree Shiv Ambe Synthetic, the bank deducted Rs. 7,03,477.96 as interest and miscellaneous charges. In case of Shree Shiv Textile bank agreed to deduct Rs. 28,08,401.00 and in case of Shree Shiv Textile (BP Account) the bank agreed to deducting Rs. 16,95,006.00. Accordingly, after deducting interest and other charges, relating to the period 30.9.1995 to 31.3.1998, the recoverable amount came out to be as under:

Veenutex Dyeing & Printing Mills Pvt. Ltd. Rs. 59,72,017.00

Shri Shiv Textile (CC Account) Rs. 39,94,103.64

Shri Shiv Textile (BP Account) Rs. 17,75,408.00

Shri Ambe Synthetic Corpn. Rs. 9,35,513.04

Shri Shiv International Rs. 24,94,368.00

Total Rs. 151,71,409.68

2.4 It is the case of the petitioners that after calculating the figure of Rs. 1,51,71,409.68, the Managing Director and Chairman of respondent bank agreed to accept One Time Settlement (OTS) amount of Rs. 94,02,017.00 i.e 61.97% as the settlement towards respondent bank. It is the case of the petitioner that Mr. C.R. Patil gave said OTS amount for and on behalf of present petitioner as under which is evident from the

account statement of M/s. Veenutax Dyeing and Printing Mills Pvt. Ltd. enclosed herewith:

On 2.7.1998 by cheque Rs. 60.00 lakhs
On 10.7.1998 by cheque Rs. 30.00 lakhs
On 11.7.1998 by cheque Rs. 4.30 lakhs

Total Rs. 94.30 lakhs
===

2.5 It is the case of the petitioners that the said amount was paid by Shri C.R. Patil for and on behalf of present petitioners i.e Ram Avatar Gupta and Shri Anand Swaroop Gupta in lieu of purchase of Veenutex Dyeing and Printing Mills Ltd. In support of payment made to GSFC and GIIC for OTS, the statement of Veenutex Dyeing and Printing Mills Pvt. Ltd. is also enclosed with the petition. It is the case of the petitioners that the petitioners have paid amount of OTS in the year 2003 but the bank filed suit for recovery of the amount which was not due.

2.5A It may be noted that in the aforesaid facts and circumstances of the case, Panchsheel Mercantile Co-op. Bank Ltd., respondent, original plaintiff, filed summary suit being Summary Suit No. 55 of 2003 before the Board of Nominees. In that suit it has been stated that Shri Madhu B. Gupta, sole proprietor of Shiv Enterprise, Shri Anand S. Gupta and Maliram Gupta, defendant Nos. 1 to 3 respectively obtained a loan of Rs. 25 lakhs and in lieu of the same, they have given promissory note to the bank. They have also pledged some of the goods with the bank on 31.3.1994. They have also given security against the same. They have thereafter withdrawn the amount from their accounts also. It is the case of the plaintiff in the suit that from 6.12.1995 the defendants have not carried out any transaction regularly with the bank. They have sold off the goods and they have not deposited the said amount in the bank. The have also failed and neglected to make payment of interest also. The plaintiff bank thereafter issued a notice dated 7.9.1998 to the defendants which the defendants have replied on 1.11.1998. Ultimately the plaintiff filed on 21-29/1/2003 summary suit contending that the plaintiff bank is entitled to Rs. 89,49,966/- as on 31.7.2002 and 18% interest on the same.

2.6 It may be noted that the defendants filed reply to the said suit and raised contention including contention of jurisdiction that the Board of Nominees has no jurisdiction in view of the Full Bench judgement of the Mumbai High Court which I have referred in the matter

in Special Civil Application No. 1885 of 2004.

2.6A It may be noted that the Bank has also filed rejoinder and stated that the Bank has not received any amount. It is the case of the bank that whatever arrangement arrived at between the original defendants and Shri C.R. Patil that was between the original defendants and Shri C.R. Patil and the plaintiff bank is not a party to the said agreement/arrangement. It is not binding on the bank and in fact Shri C.R. Patil has not paid anything to the bank on behalf of the petitioners and therefore the bank has not received any amount. It is the case of the bank that the defendants have not produced anything to show that Shri C.R. Patil has paid on behalf of defendants to the bank.

2.6B The Board of Nominees by its order dated 29.12.2003 dismissed the application of the defendants at Exhs. 20 and 21 raising the preliminary objection.

2.7 Being aggrieved and dissatisfied with the above order, the petitioners filed appeal before the Gujarat Co-operative Tribunal, Ahmedabad raising the preliminary objections. The Tribunal has dismissed the appeal as the petitioners have not produced any evidence in support of making the payment.

2.8 Being aggrieved and dissatisfied with the judgement of the Tribunal, the petitioners have filed the present petition before this Court. It may be noted that the petitioners have filed Special Civil Application No. 1885 of 2004. Both the petitions have raised identical questions of law. I have already given my judgement in Special Civil Application No. 1885 of 2004. In view of the judgement in Special Civil Application No. 1885 of 2004, the interim relief dated 13.2.2004 will also be vacated accordingly. This petition is rejected. Rule is discharged with no order as to costs.

2.9 It may be noted that the petitioners have filed Civil Application for bringing additional evidence on record. However, as I am disposing of the main matter only on one point, I do not decide the Civil Application at this stage. Therefore, no orders are passed on Civil Application No. 1251 of 2004 and Civil Application No. 2113 of 2004. They stand disposed of accordingly.

(K.M. MEHTA, J)
(pkn)